



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 10, 2003

Mr. Randall L. Meredith
Staff Attorney
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2003-0873

Dear Mr. Meredith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your requests were assigned ID#s 176327 and 176328. We have combined these files and will consider the issues presented in this single ruling assigned ID# 176327.

The Corpus Christi Independent School District (the "district") received two requests from the same individual for information relating to Safety Officer Juan Garcia Jr. and Officer Alta Perez. The request regarding Officer Garcia is for the following information:

1. [A] complete copy of the investigation conducted by Carlos Cavazos or any other administrative staff concerning Safety Officer Juan Garcia Jr. on the allegation that he inappropriately touched a female student.
2. [A]ny and all recommendations made by the Staff Attorney concerning Safety Officer Juan Garcia Jr. on his employment status.

The request regarding Officer Perez is for the following information:

1. [A]ny and all documentation concerning allegations against Officer Alta Perez concerning the violations of the Code of Ethics Violations [sic] and Improper use of the District e-mail system[.]
2. [A] copy of Chief Ortiz's recommendation to the superintendent concerning Officer Alta Perez employment status[.]

3. [A] complete copy of the investigation conducted by Carlos Cavazos or any other administrative staff concerning Officer Perez[.]
4. [A]ny and all recommendations made by the Staff Attorney concerning Officer Perez and her employment status.

You inform this office that there are no written recommendations that are responsive to item number 2 of the Garcia request or item number 4 of the Perez request. The Act does not require the district to release information that did not exist when it received these requests or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You claim that any oral communications regarding the employment status of Officer Garcia or Officer Perez are protected by the attorney-client privilege under Texas Rule of Evidence 503. We note, however, that such an oral communication would not constitute public information for purposes of the Act. *See* Gov't Code § 552.002; Attorney General Opinion JM-640 at 2 (1987) (statutory predecessor to Act would apply to questions of polygraph examiners board and examinee's answers only to extent they were in tangible items such as documents and other "developed materials"). Therefore, we need not address your claim under rule 503. You do not indicate whether the district holds or has access to any information that is responsive to the other categories of requested information. To the extent, however, that any such information existed when the district received these requests, the district must release that information if it has not already done so. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

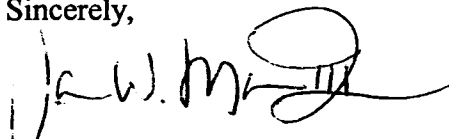
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 176327

c: Ms. Susie Luna-Saldana
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